

107TH CONGRESS
1ST SESSION

S. 972

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

IN THE UNITED STATES SENATE

MAY 25, 2001

Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. THOMPSON, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to improve electric reliability, enhance transmission infrastructure, and to facilitate access to the electric transmission grid.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electric Power Indus-
5 try Tax Modernization Act”.

6 **SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELEC-**
7 **TRIC FACILITIES.**

8 (a) RULES APPLICABLE TO ELECTRIC OUTPUT FA-
9 CILITIES.—Subpart A of part IV of subchapter B of chap-

ter 1 of the Internal Revenue Code of 1986 (relating to tax exemption requirements for State and local bonds) is amended by adding after section 141 the following new section:

“SEC. 141A. ELECTRIC OUTPUT FACILITIES.

“(a) ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILITIES.—

“(1) IN GENERAL.—A governmental unit may make an irrevocable election under this paragraph to terminate the issuance of certain obligations described in section 103(a) for electric output facilities. If the governmental unit makes such election, then—

“(A) except as provided in paragraph (2), on or after the date of such election the governmental unit may not issue with respect to any electric output facility any bond the interest on which is excluded from gross income under section 103, and

“(B) notwithstanding paragraph (1) or (2) of section 141(a) or paragraph (4) or (5) of section 141(b), no bond—

“(i) which was issued by such unit with respect to an electric output facility

1 before the date of enactment of this sub-
2 section, the interest on which was exempt
3 from tax on such date,

4 “(ii) which is an eligible refunding
5 bond that directly or indirectly refunds a
6 bond issued prior to the date of enactment
7 of this section, or

8 “(iii) which is described in paragraph
9 (2)(D), (E), or (F),

10 shall be treated as a private activity bond.

11 “(2) EXCEPTIONS.—If an election is made
12 under paragraph (1), paragraph (1)(A) does not
13 apply to any of the following bonds:

14 “(A) Any qualified bond (as defined in sec-
15 tion 141(e)).

16 “(B) Any eligible refunding bond (as de-
17 fined in subsection (d)(6)).

18 “(C) Any bond issued to finance a quali-
19 fying transmission facility or a qualifying dis-
20 tribution facility owned by the governmental
21 unit.

22 “(D) Any bond issued to finance equip-
23 ment or facilities necessary to meet Federal or
24 State environmental requirements applicable to

1 an existing generation facility owned by the
2 governmental unit.

3 “(E) Any bond issued to finance repair of
4 any existing generation facility owned by the
5 governmental unit. Repairs of facilities may not
6 increase the generation capacity of the facility
7 by more than 3 percent above the greater of its
8 nameplate or rated capacity as of the date of
9 enactment of this section.

10 “(F) Any bond issued to acquire or
11 construct—

12 “(i) a qualified facility (as defined in
13 section 45(c)(3)) if such facility is owned
14 by the governmental unit and is placed in
15 service during a period in which a qualified
16 facility may be placed in service under
17 such section, or

18 “(ii) any energy property (as defined
19 in section 48(a)(3)) that is owned by the
20 governmental unit.

21 This subparagraph shall not apply to any facil-
22 ity or property that is constructed, acquired or
23 financed for the principal purpose of providing
24 the facility (or the output thereof) to non-
25 governmental persons.

1 “(3) FORM AND EFFECT OF ELECTION.—

2 “(A) IN GENERAL.—An election under
3 paragraph (1) shall be made in such a manner
4 as the Secretary prescribes and shall be binding
5 on any successor in interest to, or any related
6 party with respect to, the electing governmental
7 unit. For purposes of this paragraph, a govern-
8 mental unit shall be treated as related to an-
9 other governmental unit if it is a member of the
10 same controlled group.

11 “(B) TREATMENT OF ELECTING GOVERN-
12 MENTAL UNIT.—A governmental unit which
13 makes an election under paragraph (1) shall be
14 treated for purposes of section 141 as a person
15 which is not a governmental unit and which is
16 engaged in a trade or business, with respect to
17 its purchase of electricity generated by an elec-
18 tric output facility placed in service after such
19 election, if such purchase is under a contract
20 executed after such election.

21 “(4) DEFINITIONS.—For purposes of this sub-
22 section:

23 “(A) EXISTING GENERATION FACILITY.—
24 The term ‘existing generation facility’ means an
25 electric generation facility owned by the govern-

1 mental unit on the date of enactment of this
 2 subsection and either in service on such date or
 3 the construction of which commenced prior to
 4 June 1, 2000.

5 “(B) QUALIFYING DISTRIBUTION FACIL-
 6 ITY.—The term ‘qualifying distribution facility’
 7 means a distribution facility over which open
 8 access distribution services described in sub-
 9 section (b)(2)(C) are available.

10 “(C) QUALIFYING TRANSMISSION FACIL-
 11 ITY.—The term ‘qualifying transmission facil-
 12 ity’ means a local transmission facility (as de-
 13 scribed in subsection (c)(3)(A)) over which open
 14 access transmission services described in sub-
 15 paragraph (A) or (B) of subsection (b)(2) are
 16 available.

17 “(b) PERMITTED OPEN ACCESS ACTIVITIES AND
 18 SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE
 19 FOR BONDS THAT REMAIN SUBJECT TO PRIVATE USE
 20 RULES.—

21 “(1) GENERAL RULE.—For purposes of this
 22 section and section 141, the term ‘private business
 23 use’ shall not include a permitted open access activ-
 24 ity or a permitted sales transaction.

1 “(2) PERMITTED OPEN ACCESS ACTIVITIES.—

2 For purposes of this section, the term ‘permitted
3 open access activity’ means any of the following
4 transactions or activities with respect to an electric
5 output facility owned by a governmental unit:

6 “(A) Providing nondiscriminatory open ac-
7 cess transmission service and ancillary
8 services—

9 “(i) pursuant to an open access trans-
10 mission tariff filed with and approved by
11 FERC, including an acceptable reciprocity
12 tariff but, in the case of a voluntarily filed
13 tariff, only if the governmental unit volun-
14 tarily files a report with the FERC within
15 90 days of the date of enactment of this
16 section relating to whether or not the
17 issuer will join a regional transmission or-
18 ganization,

19 “(ii) under an independent system op-
20 erator or regional transmission organiza-
21 tion agreement approved by FERC, or

22 “(iii) in the case of an ERCOT utility
23 (as defined in section 212(k)(2)(B) of the
24 Federal Power Act (16 U.S.C.
25 824k(k)(2)(B))), pursuant to a tariff ap-

proved by the Public Utility Commission of Texas.

“(B) Participation in—

“(i) an independent system operator agreement, or

“(ii) a regional transmission organization agreement,

which has been approved by FERC, or by the Public Utility Commission of Texas in the case of an ERCOT utility (as so defined). Such participation may include transfer of control of transmission facilities to an organization described in clause (i) or (ii).

“(C) Delivery on a nondiscriminatory open access basis of electric energy sold to end-users served by distribution facilities owned by such governmental unit.

“(D) Delivery on a nondiscriminatory open access basis of electric energy generated by generation facilities connected to distribution facilities owned by such governmental unit.

“(3) PERMITTED SALES TRANSACTION.—For purposes of this subsection, the term ‘permitted sales transaction’ means any of the following sales of

1 electric energy from existing generation facilities (as
2 defined in subsection (a)(4)(A)):

3 “(A) The sale of electricity to an on-system
4 purchaser, if the seller makes available open ac-
5 cess distribution service under paragraph (2)(C)
6 and, in the case of a seller that owns or oper-
7 ates transmission facilities, if such seller makes
8 available open access transmission under sub-
9 paragraph (A) or (B) of paragraph (2).

10 “(B) The sale of electricity to a wholesale
11 native load purchaser or in a wholesale strand-
12 ed cost mitigation sale—

13 “(i) if the seller makes available open
14 access transmission service described in
15 subparagraph (A) or (B) of paragraph (2),
16 or

17 “(ii) if the seller owns or operates no
18 transmission facilities and transmission
19 providers to the seller’s wholesale native
20 load purchasers make available open access
21 transmission service described in subpara-
22 graph (A) or (B) of paragraph (2).

23 “(4) DEFINITIONS AND SPECIAL RULES.—For
24 purposes of this subsection:

1 “(A) ON-SYSTEM PURCHASER.—The term
2 ‘on-system purchaser’ means a person whose
3 electric facilities or equipment are directly con-
4 nected with transmission or distribution facili-
5 ties which are owned by such governmental
6 unit, and such person—

7 “(i) purchases electric energy from
8 such governmental unit at retail and either
9 was within such unit’s distribution area in
10 the base year or is a person as to whom
11 the governmental unit has a service obliga-
12 tion, or

13 “(ii) is a wholesale native load pur-
14 chaser from such governmental unit.

15 “(B) WHOLESALe NATIVE LOAD PUR-
16 CHASER.—The term ‘wholesale native load pur-
17 chaser’ means a wholesale purchaser as to
18 whom the governmental unit had—

19 “(i) a service obligation at wholesale
20 in the base year, or

21 “(ii) an obligation in the base year
22 under a requirements contract, or under a
23 firm sales contract that has been in effect
24 for (or has an initial term of) at least 10
25 years,

1 but only to the extent that in either case such
2 purchaser resells the electricity (I) directly at
3 retail to persons within the purchaser's dis-
4 tribution area or (II) indirectly through one or
5 more intermediate wholesale purchasers (each
6 of whom as of June 30, 2000, was a party to
7 a requirements contract or a firm power con-
8 tract described in clause (ii)) to retail pur-
9 chasers in the ultimate wholesale purchaser's
10 distribution area.

11 “(C) WHOLESALE STRANDED COST MITI-
12 GATION SALE.—The term ‘wholesale stranded
13 cost mitigation sale’ means one or more whole-
14 sale sales made in accordance with the following
15 requirements:

16 “(i) A governmental unit's allowable
17 sales under this subparagraph during the
18 recovery period may not exceed the sum of
19 its annual load losses for each year of the
20 recovery period.

21 “(ii) The governmental unit's annual
22 load loss for each year of the recovery pe-
23 riod is the amount (if any) by which—

24 “(I) sales in the base year to
25 wholesale native load purchasers

1 which do not constitute a private busi-
2 ness use, exceed

3 “(II) sales during that year of
4 the recovery period to wholesale native
5 load purchasers which do not con-
6 stitute a private business use.

7 “(iii) If actual sales under this sub-
8 paragraph during the recovery period are
9 less than allowable sales under clause (i),
10 the amount not sold (but not more than 10
11 percent of the aggregate allowable sales
12 under clause (i)) may be carried over and
13 sold as wholesale stranded cost mitigation
14 sales in the calendar year following the re-
15 covery period.

16 “(D) RECOVERY PERIOD.—The recovery
17 period is the 7-year period beginning with the
18 start-up year.

19 “(E) START-UP YEAR.—The start-up year
20 is whichever of the following calendar years the
21 governmental unit elects:

22 “(i) The year the governmental unit
23 first offers open transmission access.

24 “(ii) The first year in which at least
25 10 percent of the governmental unit’s

1 wholesale customers' aggregate retail na-
2 tive load is open to retail competition.

3 “(iii) The calendar year which in-
4 cludes the date of the enactment of this
5 section, if later than the year described in
6 clause (i) or (ii).

7 “(F) PERMITTED SALES TRANSACTIONS
8 UNDER EXISTING CONTRACTS.—A sale to a
9 wholesale native load purchaser (other than a
10 person to whom the governmental unit had a
11 service obligation) under a contract which re-
12 sulted in private business use in the base year
13 shall be treated as a permitted sales transaction
14 only to the extent that sales under the contract
15 exceed the lesser of—

16 “(i) in any year the private business
17 use that resulted from the contract during
18 the base year, or

19 “(ii) the maximum amount of private
20 business use which could occur (absent the
21 enactment of this section) without causing
22 the bonds to be private activity bonds.

23 This subparagraph shall only apply to the ex-
24 tent that the sale is allocable to bonds issued

1 prior to the date of enactment of this section
2 (or bonds issued to refund such bonds).

3 “(G) TIME OF SALE RULE.—For purposes
4 of paragraphs (C)(ii) and (F), private business
5 use shall be determined under the law in effect
6 in the year of the sale.

7 “(H) JOINT ACTION AGENCIES.—A joint
8 action agency, or a member of (or a wholesale
9 native load purchaser from) a joint action agen-
10 cy, which is entitled to make a sale described in
11 subparagraph (A) or (B) in a year, may trans-
12 fer the entitlement to make that sale to the
13 member (or purchaser), or the joint action
14 agency, respectively.

15 “(c) CERTAIN BONDS FOR TRANSMISSION AND DIS-
16 TRIBUTION FACILITIES NOT TAX EXEMPT.—

17 “(1) GENERAL RULE.—For purposes of this
18 title, no bond the interest on which is exempt from
19 taxation under section 103 may be issued on or after
20 the date of enactment of this subsection if any of the
21 proceeds of such issue are used to finance—

22 “(A) any transmission facility which is not
23 a local transmission facility, or

24 “(B) a start-up utility distribution facility.

1 “(2) EXCEPTIONS.—Paragraph (1) shall not
2 apply to—

3 “(A) any qualified bond (as defined in sec-
4 tion 141(e)),

5 “(B) any eligible refunding bond (as de-
6 fined in subsection (d)(6)), or

7 “(C) any bond issued to finance—

8 “(i) any repair of a transmission facil-
9 ity in service on the date of the enactment
10 of this section, so long as the repair does
11 not increase the voltage level over its level
12 in the base year or increase the thermal
13 load limit of the transmission facility by
14 more than 3 percent over such limit in the
15 base year,

16 “(ii) any qualifying upgrade of a
17 transmission facility in service on the date
18 of the enactment of this section, or

19 “(iii) a transmission facility necessary
20 to comply with an obligation under a
21 shared or reciprocal transmission agree-
22 ment in effect on the date of enactment of
23 this section.

24 “(3) LOCAL TRANSMISSION FACILITY DEFINI-
25 TIONS.—For purposes of this subsection—

1 “(A) LOCAL TRANSMISSION FACILITY.—

2 The term ‘local transmission facility’ means a
3 transmission facility which is located within the
4 governmental unit’s distribution area or which
5 is, or will be, necessary to supply electricity to
6 serve retail native load or wholesale native load
7 of 1 or more governmental units. For purposes
8 of this subparagraph, the distribution area of a
9 public power authority which was created in
10 1931 by a State statute and which, as of Janu-
11 ary 1, 1999, owned at least one-third of the
12 transmission circuit miles rated at 230 kV or
13 higher in the State, shall be determined under
14 regulations of the Secretary.

15 “(B) RETAIL NATIVE LOAD.—The term
16 ‘retail native load’ with respect to a govern-
17 mental unit (or an entity other than a govern-
18 mental unit that operates an electric utility) is
19 the electric load of end-users in the distribution
20 area of the governmental unit or entity.

21 “(C) WHOLESALE NATIVE LOAD.—The
22 term ‘wholesale native load’ is—

23 “(i) the retail native load of such
24 unit’s wholesale native load purchasers (or

1 of an ultimate wholesale purchaser de-
2 scribed in subsection (b)(4)(B)(ii)), and

3 “(ii) the electric load of purchasers
4 (not described in clause (i)) under whole-
5 sale requirements contracts which—

6 “(I) do not constitute private
7 business use under the rules in effect
8 absent this subsection, and

9 “(II) were in effect in the base
10 year.

11 “(D) NECESSARY TO SERVE LOAD.—For
12 purposes of determining whether a transmission
13 or distribution facility is, or will be, necessary
14 to supply electricity to retail native load or
15 wholesale native load—

16 “(i) the governmental unit’s available
17 transmission rights shall be taken into ac-
18 count,

19 “(ii) electric reliability standards or
20 requirements of national or regional reli-
21 ability organizations, regional transmission
22 organizations and the Electric Reliability
23 Council of Texas shall be taken into ac-
24 count, and

1 “(iii) transmission, siting and con-
2 struction decisions of regional transmission
3 organizations or independent system opera-
4 tors and State and Federal regulatory and
5 siting agencies, after a proceeding that
6 provides for public input, shall be pre-
7 sumptive evidence regarding whether
8 transmission facilities are necessary to
9 serve native load.

10 “(E) QUALIFYING UPGRADE.—The term
11 ‘qualifying upgrade’ means an improvement or
12 addition to transmission facilities of the govern-
13 mental unit in service on the date of enactment
14 of this section which is ordered or approved by
15 a regional transmission organization, by an
16 independent system operator, or by a State reg-
17 ulatory or siting agency, after a proceeding that
18 provides for public input.

19 “(4) START-UP UTILITY DISTRIBUTION FACIL-
20 ITY DEFINED.—For purposes of this subsection, the
21 term ‘start-up utility distribution facility’ means any
22 distribution facility to provide electric service to the
23 public that is placed in service—

1 “(A) by a governmental unit that did not
 2 operate an electric utility on the date of the en-
 3 actment of this section, and

4 “(B) during the first ten years after the
 5 date such governmental unit begins operating
 6 an electric utility.

7 A governmental unit is treated as having operated
 8 an electric utility on the date of the enactment of
 9 this section if it operates electric output facilities
 10 which were operated by another governmental unit
 11 to provide electric service to the public on such date.

12 “(d) DEFINITIONS; SPECIAL RULES.—For purposes
 13 of this section—

14 “(1) BASE YEAR.—The term ‘base year’ means
 15 the calendar year which includes the date of the en-
 16 actment of this section or, at the election of the gov-
 17 ernmental unit, either of the 2 immediately pre-
 18 ceding calendar years.

19 “(2) DISTRIBUTION AREA.—The term ‘distribu-
 20 tion area’ means the area in which a governmental
 21 unit (or an entity other than a governmental unit
 22 that operates an electric utility) owns distribution
 23 facilities.

24 “(3) ELECTRIC OUTPUT FACILITY.—The term
 25 ‘electric output facility’ means an output facility

1 that is an electric generation, transmission, or dis-
2 tribution facility.

3 “(4) DISTRIBUTION FACILITY.—The term ‘dis-
4 tribution facility’ means an electric output facility
5 that is not a generation or transmission facility.

6 “(5) TRANSMISSION FACILITY.—The term
7 ‘transmission facility’ means an electric output facil-
8 ity (other than a generation facility) that operates at
9 an electric voltage of 69 kV or greater, except that
10 the owner of the facility may elect to treat any out-
11 put facility that the FERC determines is a trans-
12 mission facility under standards applied by FERC
13 under the Federal Power Act as a transmission facil-
14 ity for purposes of this section.

15 “(6) ELIGIBLE REFUNDING BOND.—The term
16 ‘eligible refunding bond’ means any State or local
17 bond issued after an election described in subsection
18 (a) that directly or indirectly refunds any bond de-
19 scribed in section 103(a) (other than a qualified
20 bond) issued before such election, if the weighted av-
21 erage maturity of the issue of which the refunding
22 bond is a part does not exceed the remaining weight-
23 ed average maturity of the bonds issued before the
24 election. In applying such term for purposes of sub-
25 section (c)(2)(B), the date of election shall be

1 deemed to be the date of the enactment of this sec-
2 tion.

3 “(7) FERC.—The term ‘FERC’ means the
4 Federal Energy Regulatory Commission.

5 “(8) GOVERNMENT-OWNED FACILITY.—An elec-
6 tric output facility shall be treated as ‘owned by a
7 governmental unit’ if it is an electric output facility
8 that either is—

9 “(A) owned or leased by such govern-
10 mental unit, or

11 “(B) a transmission facility in which the
12 governmental unit acquired before the base year
13 long-term firm capacity for the purposes of
14 serving customers to which the unit had at that
15 time either—

16 “(i) a service obligation, or

17 “(ii) an obligation under a require-
18 ments contract.

19 “(9) REPAIR.—The term ‘repair’ shall include
20 replacement of components of an electric output fa-
21 cility, but shall not include replacement of the facil-
22 ity either at one time or incrementally.

23 “(10) SERVICE OBLIGATION.—The term ‘service
24 obligation’ means an obligation under State or Fed-
25 eral law (exclusive of an obligation arising solely

1 under a contract entered into with a person) to pro-
 2 vide electric distribution services or electric sales
 3 service, as provided in such law.

4 “(11) CONTRACT MODIFICATIONS.—A contract
 5 is treated as a new contract if it is substantially
 6 modified.

7 “(e) SAVINGS CLAUSE.—Subsection (b) does not af-
 8 fect the applicability of section 141 to (or the Secretary’s
 9 authority to prescribe, amend or rescind regulations re-
 10 specting) (1) any transaction that is not a permitted open
 11 access transaction or permitted sales transaction, or (2)
 12 any facilities other than electric output facilities.”.

13 (b) REPEAL OF EXCEPTION FOR CERTAIN NON-
 14 GOVERNMENTAL ELECTRIC OUTPUT FACILITIES.—Sec-
 15 tion 141(d)(5) of the Internal Revenue Code of 1986 is
 16 amended by inserting “(except in the case of an electric
 17 output facility that is a distribution facility),” after “this
 18 subsection”.

19 (c) CONFORMING AMENDMENT.—The table of sec-
 20 tions for subpart A of part IV of subchapter B of chapter
 21 1 of the Internal Revenue Code of 1986 is amended by
 22 inserting after the item relating to section 141 the fol-
 23 lowing new item:

“Sec. 141A. Electric output facilities.”

24 (d) EFFECTIVE DATE; APPLICABILITY.—

1 (1) EFFECTIVE DATE.—The amendments made
 2 by this section take effect on the date of enactment
 3 of this Act, except that a governmental unit may
 4 elect to apply paragraphs (1) and (2) of section
 5 141A(b), as added by subsection (a), with respect to
 6 permitted open access activities entered into on or
 7 after April 14, 1996.

8 (2) CERTAIN EXISTING AGREEMENTS.—The
 9 amendment made by subsection (b) (relating to re-
 10 peal of the exception for certain nongovernmental
 11 output facilities) does not apply to any acquisition of
 12 facilities made pursuant to an agreement that was
 13 entered into before the date of the enactment of this
 14 Act.

15 (3) APPLICABILITY.—References in this Act to
 16 sections of the Internal Revenue Code of 1986, shall
 17 be deemed to include references to comparable sec-
 18 tions of the Internal Revenue Code of 1954.

19 **SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.**

20 (a) SALES OR DISPOSITIONS TO IMPLEMENT FED-
 21 ERAL ENERGY REGULATORY COMMISSION OR STATE
 22 ELECTRIC RESTRUCTURING POLICY.—

23 (1) IN GENERAL.—Section 1033 of the Internal
 24 Revenue Code of 1986 (relating to involuntary con-
 25 versions) is amended by redesignating subsection (k)

1 as subsection (l), and by inserting after subsection
 2 (j) the following new subsection:

3 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-
 4 ERAL ENERGY REGULATORY COMMISSION OR STATE
 5 ELECTRIC RESTRUCTURING POLICY.—

6 “(1) IN GENERAL.—For purposes of this sub-
 7 title, if a taxpayer elects the application of this sub-
 8 section to a qualifying electric transmission trans-
 9 action and the proceeds received from such trans-
 10 action are invested in exempt utility property, such
 11 transaction shall be treated as an involuntary con-
 12 version to which this section applies. The part of the
 13 gain, if any, on a sale or exchange to which section
 14 1033 is not applied by reason of section 1245 shall
 15 nevertheless not be recognized, if the taxpayer so
 16 elects, to the extent that it is applied to reduce the
 17 basis for determining gain or loss on sale or ex-
 18 change of property, of a character subject to the al-
 19 lowance for depreciation under section 167, remain-
 20 ing in the hands of the taxpayer immediately after
 21 the sale or exchange, or acquired in the same tax-
 22 able year. The manner and amount of such reduc-
 23 tion shall be determined under regulations pre-
 24 scribed by the Secretary. Any election made by the
 25 taxpayer under this section shall be made by a state-

1 ment to that effect in his return for the taxable year
 2 in which the sale or exchange takes place, and such
 3 election shall be binding for the taxable year and all
 4 subsequent taxable years.

5 “(2) EXTENSION OF REPLACEMENT PERIOD.—
 6 In the case of any involuntary conversion described
 7 in paragraph (1), subsection (a)(2)(B) shall be ap-
 8 plied by substituting ‘4 years’ for ‘2 years’ in clause
 9 (i) thereof.

10 “(3) QUALIFYING ELECTRIC TRANSMISSION
 11 TRANSACTION.—For purposes of this subsection, the
 12 term ‘qualifying electric transmission transaction’
 13 means any sale or other disposition of property used
 14 in the trade or business of electric transmission, or
 15 an ownership interest in a person whose primary
 16 trade or business consists of providing electric trans-
 17 mission services, to another person that is an inde-
 18 pendent transmission company.

19 “(4) INDEPENDENT TRANSMISSION COM-
 20 PANY.—For purposes of this subsection, the term
 21 ‘independent transmission company’ means—

22 “(A) a regional transmission organization
 23 approved by the Federal Energy Regulatory
 24 Commission,

25 “(B) a person—

1 “(i) who the Federal Energy Regu-
2 latory Commission determines in its au-
3 thorization of the transaction under section
4 203 of the Federal Power Act (16 U.S.C.
5 823b) is not a market participant within
6 the meaning of such Commission’s rules
7 applicable to regional transmission organi-
8 zations, and

9 “(ii) whose transmission facilities to
10 which the election under this subsection
11 applies are placed under the operational
12 control of a Federal Energy Regulatory
13 Commission-approved regional trans-
14 mission organization within the period
15 specified in such order, but not later than
16 the close of the replacement period, or

17 “(C) in the case of facilities subject to the
18 exclusive jurisdiction of the Public Utility Com-
19 mission of Texas, a person which is approved by
20 that Commission as consistent with Texas State
21 law regarding an independent transmission or-
22 ganization.

23 “(5) EXEMPT UTILITY PROPERTY.—For pur-
24 poses of this subsection, the term ‘exempt utility
25 property’ means—

1 “(A) property used in the trade or business
 2 of generating, transmitting, distributing, or sell-
 3 ing electricity or producing, transmitting, dis-
 4 tributing, or selling natural gas, or

5 “(B) stock acquired in the acquisition of
 6 control of a corporation whose primary trade or
 7 business consists of generating, transmitting,
 8 distributing, or selling electricity or producing,
 9 transmitting, distributing, or selling natural
 10 gas.

11 “(6) SPECIAL RULES FOR CONSOLIDATED
 12 GROUPS.—

13 “(A) INVESTMENT BY QUALIFYING GROUP
 14 MEMBERS.—

15 “(i) IN GENERAL.—This subsection
 16 shall apply to a qualifying electric trans-
 17 mission transaction engaged in by a tax-
 18 payer if the proceeds are invested in ex-
 19 empt utility property by a qualifying group
 20 member.

21 “(ii) QUALIFYING GROUP MEMBER.—
 22 For purposes of this subparagraph, the
 23 term ‘qualifying group member’ means any
 24 member of a consolidated group within the
 25 meaning of section 1502 and the regula-

1 tions promulgated thereunder of which the
2 taxpayer is also a member.

3 “(B) COORDINATION WITH CONSOLIDATED
4 RETURN PROVISIONS.—A sale or other disposi-
5 tion of electric transmission property or an
6 ownership interest in a qualifying electric trans-
7 mission transaction, where an election is made
8 under this subsection, shall not result in the
9 recognition of income or gain under the consoli-
10 dated return provisions of subchapter A of
11 chapter 6. The Secretary shall prescribe such
12 regulations as may be necessary to provide for
13 the treatment of any exempt utility property re-
14 ceived in a qualifying electric transmission
15 transaction as successor assets subject to the
16 application of such consolidated return provi-
17 sions.

18 “(7) ELECTION.—Any election made by a tax-
19 payer under this subsection shall be made by a
20 statement to that effect in the return for the taxable
21 year in which the qualifying electric transmission
22 transaction takes place in such form and manner as
23 the Secretary shall prescribe, and such election shall
24 be binding for that taxable year and all subsequent
25 taxable years.”

1 (2) SAVINGS CLAUSE.—Nothing in section
 2 1033(k) of the Internal Revenue Code of 1986, as
 3 added by subsection (a), shall affect Federal or
 4 State regulatory policy respecting the extent to
 5 which any acquisition premium paid in connection
 6 with the purchase of an asset in a qualifying electric
 7 transmission transaction can be recovered in rates.

8 (3) EFFECTIVE DATE.—The amendments made
 9 by this subsection shall apply to transactions occur-
 10 ring after the date of the enactment of this Act.

11 (b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-
 12 ERAL ENERGY REGULATORY COMMISSION OR STATE
 13 ELECTRIC RESTRUCTURING POLICY.—

14 (1) IN GENERAL.—Section 355(e)(4) of the In-
 15 ternal Revenue Code of 1986 is amended by redesign-
 16 ating subparagraphs (C), (D), and (E) as subpara-
 17 graphs (D), (E), and (F), respectively, and by in-
 18 serting after subparagraph (B) the following new
 19 subparagraph:

20 “(C) DISTRIBUTIONS OF STOCK TO IMPLE-
 21 MENT FEDERAL ENERGY REGULATORY COMMIS-
 22 SION OR STATE ELECTRIC RESTRUCTURING
 23 POLICY.—

24 “(i) IN GENERAL.—Paragraph (1)
 25 shall not apply to any distribution that is

1 a qualifying electric transmission trans-
 2 action. For purposes of this subparagraph,
 3 a ‘qualifying electric transmission trans-
 4 action’ means any distribution of stock in
 5 a corporation whose primary trade or busi-
 6 ness consists of providing electric trans-
 7 mission services, where such stock is later
 8 acquired (or where the assets of such cor-
 9 poration are later acquired) by another
 10 person that is an independent transmission
 11 company.

12 “(ii) INDEPENDENT TRANSMISSION
 13 COMPANY.—For purposes of this sub-
 14 section, the term ‘independent trans-
 15 mission company’ means—

16 “(I) a regional transmission or-
 17 ganization approved by the Federal
 18 Energy Regulatory Commission,

19 “(II) a person who the Federal
 20 Energy Regulatory Commission deter-
 21 mines in its authorization of the
 22 transaction under section 203 of the
 23 Federal Power Act (16 U.S.C. 824b)
 24 is not a market participant within the
 25 meaning of such Commission’s rules

1 applicable to regional transmission or-
2 ganizations, and whose transmission
3 facilities transferred as a part of such
4 qualifying electric transmission trans-
5 action are placed under the oper-
6 ational control of a Federal Energy
7 Regulatory Commission-approved re-
8 gional transmission organization with-
9 in the period specified in such order,
10 but not later than the close of the re-
11 placement period (as defined in sec-
12 tion 1033(k)(2)), or

13 “(III) in the case of facilities
14 subject to the exclusive jurisdiction of
15 the Public Utility Commission of
16 Texas, a person that is approved by
17 that Commission as consistent with
18 Texas State law regarding an inde-
19 pendent transmission organization.”

20 (2) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply to distributions occur-
22 ring after the date of the enactment of this Act.

1 **SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILI-**
 2 **TIES EXCLUDED FROM GROSS INCOME AS**
 3 **CONTRIBUTIONS TO CAPITAL.**

4 (a) IN GENERAL.—Subsection (c) of section 118 of
 5 the Internal Revenue Code of 1986 (relating to contribu-
 6 tions to the capital of a corporation) is amended—

7 (1) by striking “WATER AND SEWAGE DIS-
 8 POSAL” in the heading, and inserting “CERTAIN”,

9 (2) by striking “water or,” in the matter pre-
 10 ceding subparagraph (A) of paragraph (1) and in-
 11 serting “electric energy, water, or”,

12 (3) by striking “water or” in paragraph
 13 (1)(B) and inserting “electric energy (but not includ-
 14 ing assets used in the generation of electricity),
 15 water, or”,

16 (4) by striking “water or” in paragraph
 17 (2)(A)(ii) and inserting “electric energy (but not in-
 18 cluding assets used in the generation of electricity),
 19 water, or”,

20 (5) by inserting “such term shall include
 21 amounts paid as customer connection fees (including
 22 amounts paid to connect the customer’s line to an
 23 electric line or a main water or sewer line) and”
 24 after “except that” in paragraph (3)(A), and

25 (6) by striking “water or” in paragraph (3)(C)
 26 and inserting “electric energy, water, or”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to amounts received after the date
 3 of the enactment of this Act.

4 **SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING**
 5 **FUNDS.**

6 (a) INCREASE IN AMOUNT PERMITTED TO BE PAID
 7 INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—
 8 Subsection (b) of section 468A of the Internal Revenue
 9 Code of 1986 (relating to special rules for nuclear decom-
 10 missioning costs) is amended to read as follows:

11 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

12 “(1) IN GENERAL.—The amount which a tax-
 13 payer may pay into the Fund for any taxable year
 14 during the funding period shall not exceed the level
 15 funding amount determined pursuant to subsection
 16 (d), except—

17 “(A) where the taxpayer is permitted by
 18 Federal or State law or regulation (including
 19 authorization by a public service commission) to
 20 charge customers a greater amount for nuclear
 21 decommissioning costs, in which case the tax-
 22 payer may pay into the Fund such greater
 23 amount, or

24 “(B) in connection with the transfer of a
 25 nuclear powerplant, where the transferor or

1 transferee (or both) is required pursuant to the
2 terms of the transfer to contribute a greater
3 amount for nuclear decommissioning costs, in
4 which case the transferor or transferee (or
5 both) may pay into the Fund such greater
6 amount.

7 “(2) CONTRIBUTIONS AFTER FUNDING PE-
8 RIOD.—Notwithstanding any other provision of this
9 section, a taxpayer may make deductible payments
10 to the Fund in any taxable year between the end of
11 the funding period and the termination of the license
12 issued by the Nuclear Regulatory Commission for
13 the nuclear powerplant to which the Fund relates
14 provided such payments do not cause the assets of
15 the Fund to exceed the nuclear decommissioning
16 costs allocable to the taxpayer’s current or former
17 interest in the nuclear powerplant to which the Fund
18 relates. The foregoing limitation shall be applied by
19 taking into account a reasonable rate of inflation for
20 the nuclear decommissioning costs and a reasonable
21 after-tax rate of return on the assets of the Fund
22 until such assets are anticipated to be expended.”

23 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING
24 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)
25 of the Internal Revenue Code of 1986 (relating to income

1 and deductions of the taxpayer) is amended to read as
 2 follows:

3 “(2) DEDUCTION OF NUCLEAR DECOMMISS-
 4 SIONING COSTS.—In addition to any deduction under
 5 subsection (a), nuclear decommissioning costs paid
 6 or incurred by the taxpayer during any taxable year
 7 shall constitute ordinary and necessary expenses in
 8 carrying on a trade or business under section 162.”

9 (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of
 10 section 468A of the Internal Revenue Code of 1986 is
 11 amended to read as follows:

12 “(d) LEVEL FUNDING AMOUNTS.—

13 “(1) ANNUAL AMOUNTS.—For purposes of this
 14 section, the level funding amount for any taxable
 15 year shall equal the annual amount required to be
 16 contributed to the Fund in each year remaining in
 17 the funding period in order for the Fund to accumu-
 18 late the nuclear decommissioning costs allocable to
 19 the taxpayer’s current or former interest in the nu-
 20 clear powerplant to which the Fund relates. The an-
 21 nual amount described in the foregoing sentence
 22 shall be calculated by taking into account a reason-
 23 able rate of inflation for the nuclear decommis-
 24 sioning costs and a reasonable after-tax rate of re-

1 turn on the assets of the Fund until such assets are
2 anticipated to be expended.

3 “(2) FUNDING PERIOD.—The funding period
4 for a Fund shall end on the last day of the last tax-
5 able year of the expected operating life of the nu-
6 clear powerplant.

7 “(3) NUCLEAR DECOMMISSIONING COSTS.—For
8 purposes of this section—

9 “(A) IN GENERAL.—The term ‘nuclear de-
10 commissioning costs’ means all costs to be in-
11 curred in connection with entombing, decon-
12 taminating, dismantling, removing, and dis-
13 posing of a nuclear powerplant, and shall in-
14 clude all associated preparation, security, fuel
15 storage, and radiation monitoring costs. Such
16 term shall include all such costs which, outside
17 of the decommissioning context, might other-
18 wise be capital expenditures.

19 “(B) IDENTIFICATION OF COSTS.—The
20 taxpayer may identify nuclear decommissioning
21 costs by reference either to a site-specific engi-
22 neering study or to the financial assurance
23 amount calculated pursuant to section 50.75 of
24 title 10 of the Code of Federal Regulations.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to amounts paid after June 30,
3 2000, in taxable years ending after such date.

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